



February 22, 1999

Mr. Edgar O. Coble, Jr.  
2200 Forest Park Blvd.  
Fort Worth, Texas 76110

OR99-0512

Dear Mr. Coble:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122334.

The Grand Prairie Independent School District (the "district"), which you represent, received a request for a copy of the district's response to the Office of Civil Rights ("OCR") in the OCR's investigation of allegations of discrimination against female coaches and athletes. You contend that the requested information is excepted from public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably

anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You inform this office that two female coaches have filed complaints with the Equal Employment Opportunity Commission ("EEOC") and a third employee has filed a complaint with the Texas Commission on Human Rights (the "TCHR") alleging discrimination. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). You inform us that the EEOC had issued right-to-sue letters to the two female coaches. You further explain that the coaches must file lawsuits by January 17 and 24, 1999. As of January 29, 1999, you have not been served with notice of either lawsuit. As for the complaint with the TCHR, you have submitted a letter from TCHR, dated September 16 1997, informing the district that a complaint had been filed against the district. We have contacted the TCHR and TCHR informs us that the complaint was dismissed in April 1998. Based on your arguments and the information before us, we conclude that you have not shown that litigation is reasonably anticipated. Thus, you may not withhold the requested information pursuant to section 552.103(a). Except for the information discussed below, you must release the requested information.

The records contain information that appears to be directory information under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

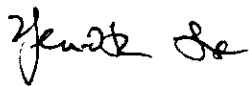
An educational institution or agency may release "directory information" to the public if the education institution complies with section 1232g(a)(5)(B) of title 20 of the United States Code. "Directory information" includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides that

[a]ny educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B). If the district has complied with section 1232g(a)(5)(B) by designating the requested information as directory information, giving public notice of the designation, and allowing a reasonable period of time for response to the notice, then it may release the requested information. However, if the district has not taken the above steps in compliance with section 1232g(a)(5)(B), then the marked information must be withheld from required public disclosure under FERPA.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 122334

Enclosures: Submitted documents

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(w/o enclosures)